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# In the Supreme Court of the United States

OCTOBER TERM, 1979

FRANKLIN PROPERTY COMPANY,
d/b/a THE HILTON INN, PETITIONER

*v.*

NATIONAL LABOR RELATIONS BOARD
and
HOTEL, MOTEL, RESTAURANT EMPLOYEES AND
BARTENDERS UNION LOCAL 12,
HOTEL AND RESTAURANT EMPLOYEES
AND BARTENDERS INTERNATIONAL UNION

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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### QUESTION PRESENTED

Whether substantial evidence supports the Board's finding that the Company violated Section 8(a)(1) of the National Labor Relations Act by coercively interrogating an employee as to her union sentiments and those of other employees.

I

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## OPINIONS BELOW

The order of the court of appeals (Pet. App. 1a–3a) is reported at 617 F.2d 447. The decision and the order of the Board (Pet. App. 4a–21a) are reported at 232 N.L.R.B. 873.

## JURISDICTION

The judgment of the court of appeals was entered on March 20, 1980 (Pet. 2). The petition for a writ of certiorari was filed on June 18, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, are set forth at Pet. 2–3.

## STATEMENT

Franklin Property Company ("the Company") operates a hotel-motel called the Hilton Inn in Sharonville, Ohio. On or about August 24 or 25, 1976,[1] the Company became aware that the Union[2] had filed a petition with the Board requesting an election among Company employees (Pet. App. 13a; A. 22B–23, 61).[3]

On or about August 25, Company Manager William Green telephoned night-shift waitress Evelyn Link, an

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[1] All dates refer to 1976.

[2] The Hotel, Motel, Restaurant Employees and Bartenders Local 12, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO.

[3] "A." refers to the appendix to the briefs filed in the court of appeals.

active union advocate, while she was working in the Company's dining room (Pet. App. 1a–2a, 13a; A. 22A–22B). Green asked Link if she "knew anything about any cards being passed out in the kitchen." He went on to say that he "kept hearing persistent rumors about a union attempting to be organized." Then he told Link that "he felt if [she] knew anything about it [she] would tell him." Link informed Green that she had not seen any cards in the past few days. Green then asked Link if anyone on her shift was "involved" in the Union's organizing attempts and if anyone from the Union had come to her home. Link replied in the negative and said that she was busy, and the conversation ended. (Pet. App. 1a–2a, 13a; A. 23–24.)

In November, Manager Green told Link that "he would get her beginning Thursday, [the day] after the election, that he would reprimand her to death, that he would have her watched, that he would get her." He told busboy Michael Pauley, "Mike * * * [o]ne of these days I may not have any need for busboys anymore." (Pet. App. 2a, 16a–17a; A. 25, 28, 34.) In October, the Company's Food and Beverage Manager, Theodore Johni, told waitress Joyce Schoemer that if the Union won the election "[y]ou could lose benefits. They [the Union] can't get you no more than what you already have. You could lose some of them" (Pet. App. 2a, 15a; A. 43–45). In November, Johni told busboy Jerry Donahue that "it is possible the bus boys might have a reduction in pay from the present [$]2.25 to $1.65 if the union got in," adding "[i]f I were you I wouldn't vote for the union" (Pet. App. 2a, 14a; A. 54–55, 57).

On the foregoing facts, the Board, affirming the administrative law judge, found that the Company had violated Section 8(a)(1) of the Act by coercively interrogating Link as to her union sentiments and those of other employees, by threatening Link and another employee with reprisals for having engaged in union activity, and by threatening employees with loss of benefits should they designate the Union as their collective bargaining representative (Pet. App. 4a–5a, 18a).

The Board's order requires the Company to cease and desist from the unfair labor practices found and from, in any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act. Affirmatively, the Board's order requires the Company to post the customary notices (Pet. App. 5a, 18a–19a).

The court of appeals sustained the Board's findings and conclusions and enforced its order (Pet. App. 1a–3a).

## ARGUMENT

The sole issue presented by the petition is whether substantial evidence supports the Board's finding that Company Manager Green coercively interrogated Evelyn Link on August 25, 1976, in violation of Section 8(a)(1) of the Act.[4] This issue, which turns on an evaluation of the facts of this particular case, does not

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[4] Petitioner does not here contest the other findings, upheld by the court of appeals, that it violated Section 8(a)(1) of the Act by threatening employees with reprisals and loss of benefits (Pet. 2–3).

warrant further review. *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 490–491 (1951). In any event, as we have shown, the record supports the Board's finding.

Nor does the decision below conflict with any of the cases on which petitioner relies. The management representatives who questioned employees in *Arvin Industries, Inc.*, 226 N.L.R.B. 925 (1976), *Sentry Food Store*, 198 N.L.R.B. 879, 883 (1972), *NLRB* v. *P.B. & S. Chemical Company*, 567 F.2d 1263, 1267 (4th Cir. 1977), and *Hughes and Hatcher, Inc.* v. *NLRB*, 393 F.2d 557, 564 (6th Cir. 1968), expressly assured employees that they had the right to organize or that no reprisals would be taken against union supporters. Here, by contrast, no such assurances were given. Indeed, the Company sought information as to the identity of the Union's supporters. In *Pepsi-Cola Bottling*, 211 N.L.R.B. 870, 871–872 (1974), and *Federal-Mogul Corp.* v. *NLRB*, 566 F.2d 1245, 1250–1251 (5th Cir. 1978), questions were asked by low-level supervisors and candidly answered in a casual, social context. In *NLRB* v. *Monroe Tube Co.*, 545 F.2d 1320, 1327 (2d Cir. 1976), the individual soliciting the withdrawal of union cards was simply a fellow employee. Here, however, an employee was specifically approached for the sole purpose of gaining information about the union activities of herself and others by the Company Manager, who had personal power to affect adversely her working conditions and who later threatened to do so. Moreover, the coercive effect of the questioning is evidenced by the fact that, rather than candidly answering Manager Green's questions, employee Link was

evasive and cut the conversation short. In *NLRB* v. *Welsh Industries, Inc.*, 385 F.2d 538, 540 (6th Cir. 1967), the court found that the questions asked were "innocuous," and in *Rotek, Inc.*, 194 N.L.R.B. 453, 456 (1971), the Board found no other coercive conduct "sufficiently closely connected or related to the interrogation" to make a single question to one employee unlawful. Here, by contrast, the Board specifically rejected the contention that Green's questioning of Link was a "casual, isolated interrogation" (Pet. App. 14a), and the court of appeals held that substantial evidence supported this conclusion (Pet. App. 3a). In contrast to the facts of the present case, the employee in *W-I Canteen Service, Inc.* v. *NLRB*, 606 F.2d 738, 748–749, (7th Cir. 1979), herself initiated the conversation that subsequently was the subject of complaint. Finally, in *Penasquitos Village, Inc.* v. *NLRB*, 565 F.2d 1074, 1080–1082 (9th Cir. 1977), the court refused to uphold the Board's conclusions because the Board had reversed the credibility determinations of the administrative law judge. Here, the Board affirmed all of the findings of the administrative law judge (Pet. App. 4a–5a & n.1).

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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